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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,016	02/05/2002	Gregg D. Givens	5218-88	7225

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EXAMINER

MCCROSKY, DAVID J

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 04/23/2004

10

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

10/068,016

Applicant(s)

GIVENS ET AL.

Examiner

David J. McCrosky

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) 11,36,44,46 and 50-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10,12-35,37-43,45,47-49,58 and 59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of invention I and species A in Paper No. 10 is acknowledged. The traversal is on the ground(s) that an undue hardship is not presented. This is not found persuasive because independent and distinct inventions and species classified in separate areas are presented.

Examiner agrees with Applicant that claim 36 belongs in species B of invention I and therefore, it has not been treated. With the amendment of January 30, 2004, claim 44 is now part of species B of invention I with claim 38 being generic.

The requirement is still deemed proper and is therefore made FINAL.

Claims 11, 36, 44, 46 and 50-57 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and/or species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 9.

### ***Claim Objections***

Claim 32 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3736

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Pavlakos. The reference discloses a method for performing a hearing evaluation over a computer network. The test comprises commands sent by software module (16) residing on the server (18). A client CPU (12) generates hearing assessment signals. See ¶¶26, 27 and claim 1. Various frequencies and levels are used. See ¶¶5 and 6. Information concerning the output is relayed to a clinician. See ¶¶12 and 13.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 12-35, 37 and 47-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bosscher in view of Feezor et al. Bosscher discloses an audiometric method for performing hearing tests wherein the clinician operates an audiometer to provide tone signals of selectively adjustable frequency and level using controls (13) and (14). See col. 2, ll. 50-54. The operator determines which hearing assessment signals are relayed. See col. 8, ll. 38-43 and col. 9, ll. 50-53. Bosscher does not disclose a computer network. However, Feezor et al teach expanding a local hearing

Art Unit: 3736

testing method to remote geographical locations so that mass hearing tests can be conducted using only a small number of clinicians. See col. 6, ll. 21-24 and ll. 50-61. Ambient noise (70) and distortion measurements (71) are provided. See col. 34, ll. 38-45. The patient is provided with an input (24) during testing. See col. 11. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Bosscher with the computer network of Feezor et al to conduct mass hearing tests using a small number of clinicians.

Regarding claims 5, 29 and 35, Bosscher and Feezor et al do not specifically recite meeting ANSI standards. However, it would have been obvious to one of ordinary skill in the art to comply with ANSI standards in view of the universal scientific/medical desire for accurate testing and diagnosis.

Regarding claims 15-17, Bosscher and Feezor et al do not teach a microphone or voice recognition software. It would have been an obvious matter of design choice to modify the method of Bosscher and Feezor et al by providing a microphone or voice recognition software since Applicant has not disclosed that using these types of inputs solve any stated problem or is for any particular purpose and it appears that the method would perform equally well with an input of any type.

Regarding claims 18-20, Bosscher and Feezor et al do not teach specific locations. It would have been an obvious matter of design choice to modify the method of Bosscher and Feezor et al by performing the method at different locations since Applicant has not disclosed that these locations solve any stated problem or is for any

particular purpose and it appears that the method would work equally well at any common location for testing hearing.

Regarding claims 21-25, Bosscher and Feezor et al do not teach computer implemented scheduling. It would have been an obvious to one of ordinary skill in the art to use a computer for scheduling since scheduling software for medical applications is well known in the art.

Claims 38-43, 58 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pavlakos as applied to claim 1 above. Pavlakos teaches a method of testing hearing over the internet as recited for claim 1. Pavlakos does not teach serving web pages from the patient site to the web client (administrator). It would have been obvious to one having ordinary skill in the art at the time of the invention was made to reverse the location of the server and client, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Gazda*, 219 F.2d 449, 104 USPQ 400 (CCPA 1955). Furthermore, it is well known in the art to reload or refresh web pages. It would have been obvious to one of ordinary skill in the art to reload web pages to provide the most current data.

Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pavlakos as applied to claims 1 and 38 above, and further in view of Feezor et al. Pavlakos teaches a method of testing hearing over the internet as recited for claims 1 and 38. Pavlakos does not disclose measuring transient or distortion product emission levels. Feezor et al teach hearing testing at remote geographical locations so that mass hearing tests can be conducted using only a small number of clinicians. See col. 6, ll.

Art Unit: 3736

21-24 and II. 50-61. Ambient noise (70) and distortion measurements (71) are provided. See col. 34, II. 38-45. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Pavlakos with distortion measurements of Feezor et al to conduct the most accurate and efficient hearing tests.


**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. David et al teach that it is well known for clinicians to communicate with patients from a remote location. Naidoo, Rho and Hou disclose internet hearing tests.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. McCrosky whose telephone number is 703-305-1331. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mary Beth Jones can be reached on 703-308-3400. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 ERIC F. WINAKUR  
PRIMARY EXAMINER